Constitutionality of Laws regulating the practice of medicine x

CONSTITUTIONALITY OF LAWS REGULATING THE PRACTICE OF MEDICINE.

The matter of the regulation of the practice of medicine and surgery by legislative enactment is daily acquiring more importance and efficiency as the various acts which have been from time to time passed in the different States come to be tested and sustained by the courts.

The most recent case of this kind has been decided by Judge Green, of the Supreme Court of West Virginia, in regard to one Dent, who sought to practise medicine in that State without the required license, which was refused him because the Board of Health did not consider that the college whence he had his diploma, the "American Medical Eclectic College of Cincinnati, Ohio," came under the word "reputable" as defined by said Board. The defendant having been found guilty in the lower court, and the court having overruled a motion for the arrest of judgment, the former took a bill of exceptions, setting forth that the act "was unconstitutional and therefore void so far as it interfered with the vested rights of the defendant in relation to the practice of medicine." In some half-dozen or more cases quoted by the court as occurring in different States of the Union, this was the point taken in every instance, and has always been overruled, and the constitutionality shown by the application of undisputed principles well settled by numerous decisions.

In view of the increasing importance of a knowledge of this subject to medical men, it will be interesting to explain more fully the ground on which such unconstitutionality is alleged. It is held that the sections defining the conditions essential to obtaining the license to practise, which are similar in the acts of the different Legislatures, are inconsistent with Article 10 of the amendments to the Constitution of the United States and to Section 1 of Article 14 of the same amendments, as well as sections in the bill of rights, which are also more or less common to the constitutions of all the States. Perhaps the strongest paragraph out of a number explaining these provisions is the following: "Every wanton and careless restraint of the subject, whether practised by a monarch, a nobility or a popular assembly, is, to a degree, a tyranny; nay, even laws themselves, whether made with or without our consent, if they regulate and constrain our conduct in matters of mere indifference, without a good end in view, are regulations destructive of liberty." But the courts have ruled that the laws regulating the practice of medicine are no violation of such principles. The Legislature of any State has a perfect right, under its general police power, to pass laws placing individuals under restraint in the exercise of any business, calling or profession, and has exercised it. In accordance with this laws have been made to license bakers and sellers of intoxicating drinks, and the practice of law has been thus regulated in every State, and the same principles apply to the regulation of the practice of medicine.

An amendment passed in 1818 to the Massachusetts Act of 1817 is analogous to Section 4 of the Registration Act of the State of Pennsylvania, requiring the faculties of the medical colleges in this State to pass upon the diploma of a graduate of a college in another State who desires to practise in Pennsylvania. The amendment to the Massachusetts Act provided that no person practising physic or surgery shall be entitled to the benefit of the law for the recovery of any debts or fees for his professional services, unless he shall, previously to rendering such services, have been licensed by the Medical Society or been graduated a doctor in medicine at Harvard University. This amendment, it was claimed, was unconstitutional, but not because it required a license of a physician before he could practise, but because, in violation of the State constitution, it conferred peculiar privileges upon the Medical Society or Harvard University. But the court in Hewitt vs. Charer, 16 Peck, 356, decided that this act was constitutional, saying: "It appears to us that the leading and sole purpose of this act was to guard the public against ignorance, negligence and carelessness in the members of one of the most useful professions." And this they treated as legitimate, as a matter of course.

In giving the opinion from which the above information is obtained, the learned Judge concluded as follows: "It seems, therefore, clear that both on reason and authority we could not do otherwise than hold that all the provisions in Section 9 and Section 15 of Chapter 93 of the Acts of 1882 are constitutional and valid, and should be enforced by all the courts." And in this the three remaining judges concurred.—*Medical News.*